THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

-

WRIT PETITION No.14142 of 1997

-

Dated: 23.01.2007

Between:

G.Srinivasa Rao S/o Suryanarayana

R/o Visakhapatnam.

..... PETITIONER

AND

The Commissioner, Gajuwaka Municipality,

Gajuwaka, Visakhapatnam and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

-

WRIT PETITION No.14142 of 1997

-

ORDER:

This writ petition is filed seeking a declaration that the endorsement dated 20.03.1997 issued by the Commissioner, Gajuwaka Municipality-first respondent herein, is arbitrary and illegal and also for a direction to the respondents not to interfere with the construction of flats in Sy.No2/P of Gajuwaka.

It is the case of the petitioner that one C.Satyanarayana was the owner of land admeasuring Ac.747.95 square meters in Sy.No.2/P of Gajuwaka, and he obtained permission from the Municipality for construction of stilt floor, ground and two flours in the said land in the year 1991. However, as the said Satyanarayana could not complete the construction in time, he obtained fresh permission from the Municipality

on 01.08.1996. He is said to have executed a General Power of Attorney in favour of the petitioner authorizing him to construct flats in the said land, and also sold 12 flats to the petitioner. When the petitioner was proceeding with construction, the first respondent by proceedings dated 20.03.1997 cancelled the approval granted for construction of the said building stating that the said land belongs to the Government, and the petitioner was also called upon to submit his explanation. The grievance of the petitioner is that though he has submitted explanation, neither any order was passed on his explanation nor the cancellation order was revoked. Hence, this writ petition.

Separate counters have been filed on behalf of respondents 1 and 2. It is stated in the counters that as per the list dated 19.03.1997 furnished by the District Collector, Visakhapatnam, the land in question vests in the Government, and therefore, the impugned endorsement was issued canceling the permission granted for construction of building in the said land. It is further stated that as the petitioner as well as the said Satyanarayana have no right over the said land, the petitioner cannot proceed with the construction of the building in the said land.

While issuing rule nisi, a learned Single Judge of this Court passed an order suspending the operation of the impugned endorsement dated 20.03.1997 in W.P.M.P.Nos.17042 and 17043 of 1997, and the same is as under:

> "It is however seen from the material on record that the land in question changed hands a number of times through registered sale deeds dating back to the year 1968. According to the petitioner the entire Ac.250.00 of land of Gajuwaka is built up and that the issue with regard to this land is now before the House Committee of the Legislative Assembly.
>
> Having regard to the above facts and circumstances of the case, I am prima facie satisfied that it is a fit case for suspending the operation of the impugned endorsement dated 20.03.1997 subject to the condition that the petitioner shall file an undertaking that in the event of the writ petition being ultimately dismissed, he shall not claim any equities and that any construction made by him will be at his risk.
>
> Accordingly, these miscellaneous petitions are disposed of suspending the operation of the impugned endorsement dated 20.03.1997 issued by the first respondent subject to the petitioner filing such undertaking. The petitioner is permitted to go ahead with the construction at his risk subject to the result of the writ petition.

Having heard both the counsel and on a perusal of the material on record, it is clear that the issue with regard to the entire extent of Ac.250.00 of land in Gajuwaka is before the House Committee of the Legislative Assembly and unless and until it is decided by the House Committee, it cannot be said as to whether the petitioner has any right over the said land.

Hence, the petitioner is hereby directed to offer his explanation to the first respondent clearly stating as to how he is entitled for possession of the land in question. However, it is made clear that his possession or dispossession is subject

to the findings of the House Committee of the Legislative Assembly.

Subject to the above directions, the writ petition is disposed of. There shall be no order as to costs.

_____

23.01.2007

sh